

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FELIX CAMACHO.

Petitioner.

V.

ROBERT HERNANDEZ, Warden,

Respondent

Civil No. 08-0016 BEN (LSP)

ORDER:

**(1) DENYING IN FORMA PAUPERIS
APPLICATION AND DISMISSING
CASE WITHOUT PREJUDICE [doc. no.
5; and**

(2) DENYING MOTION FOR RECONSIDERATION [doc. no. 6]

On January 2, 2008, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On January 8, 2008, the Court dismissed the petition because Petitioner had failed to either pay the \$5.00 filing fee or move to proceed in forma pauperis. (*See* Order dated Jan. 8, 2008 [doc. no.4].) Petitioner was given until March 14, 2008 to either pay the \$5.00 filing fee or submit adequate proof of his inability to pay the fee.

MOTION TO PROCEED IN FORMA PAUPERIS

On January 18, 2008, Petitioner filed a motion to proceed in forma pauperis and a trust account statement reflecting a \$18.20 balance in his prison trust account. The filing fee associated with this type of action is \$5.00. *See* 28 U.S.C. § 1914(a). Thus, it appears Petitioner can pay the requisite filing fee. Accordingly, the Court **DENIES** the request to proceed in forma pauperis, and **DISMISSES** the case without prejudice and with leave to amend.

MOTION FOR RECONSIDERATION

Petitioner has also filed a motion for reconsideration of the Court's January 8, 2008, dismissal order. Petitioner contends that he cannot comply with the Court's dismissal orders because the officials at Donovan State Prison refuse to give him trust account statements without a court order or case number. (*See* Mtn. for Reconsid. [doc. no. 6.] at 1-2; Pet. for Order for Cert. of Prison Trust Acct. [doc. no. 2] at 1.)

7 A motion for reconsideration is appropriate “if the district court (1) is presented with
8 newly discovered evidence, (2) committed clear error or the initial decision was manifestly
9 unjust, or (3) if there is an intervening change in controlling law.” *School District No. 1J v.*
10 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993) (citing *All Hawaii Tours, Corp. v. Polynesian*
11 *Cultural Center*, 116 F.R.D. 645, 648 (D.Hawaii 1987), *rev'd on other grounds* , 855 F.2d 860
12 (9th Cir.1988)). Petitioner has not satisfied his burden. Despite his claims, Petitioner has
13 succeeded in providing four sets of trust account statements to the Court with his current filing.
14 (See Mot. to Proceed In Forma Pauperis [doc. no. 5] at Ex. A.) Moreover, Petitioner now has
15 a current case number and two court orders directing that he provide the Court with current a
16 trust account statement. (See Order dated Jan. 8, 2008 [doc. no. 4] and this Order.) Petitioner’s
17 motion does not contain any newly discovered evidence which alters this conclusion, there has
18 not been an intervening change of controlling law, nor has the Court committed clear error or
19 rendered a decision which is manifestly unjust. Accordingly, his motion for reconsideration is
20 **DENIED**

CONCLUSION

22 For the foregoing reasons, Petitioner's motion to proceed in forma pauperis is **DENIED**
23 without prejudice. If Petitioner wishes to proceed with this case, he must, **no later than March**
24 **31, 2008**, either pay the \$5.00 filing fee or submit adequate proof of his inability to pay the fee.

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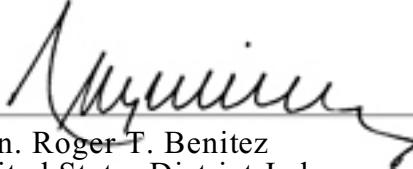
1 **THE CLERK OF COURT IS DIRECTED TO MAIL PETITIONER A BLANK MOTION**
2 **TO PROCEED IN FORMA PAUPERIS FORM.**

3 In addition, Petitioner's motion for reconsideration [doc. no. 6] is **DENIED**.

4 **IT IS SO ORDERED.**

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6 DATED: January 25, 2008

7 
8 Hon. Roger T. Benitez
9 United States District Judge

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